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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.               | CONFIRMATION NO.            |
|--|-------------|----------------------|-----------------------------------|-----------------------------|
| 10/789,776   | 02/27/2004  | James Say            | TS-02-24                          | 1912                        |
| 30349  | 7590        | 08/13/2008           |                                   |                             |
| JACKSON & CO., LLP<br>6114 LA SALLE AVENUE<br>#507<br>OAKLAND, CA 94611-2802 |             |                      | EXAMINER<br>NATNITHITHADHA, NAVIN |                             |
|  |             |                      | ART UNIT<br>3735                  | PAPER NUMBER                |
|  |             |                      | NOTIFICATION DATE<br>08/13/2008   | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@jacolaw.com  
docketing@jacolaw.com  
mail@jacolaw.com

### Office Action Summary

**Application No.**

10/789,776

**Applicant(s)**

SAY ET AL.

**Examiner**

NAVIN NATNITHADHA

**Art Unit**

3735

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date 20080508
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. According to the Amendment, filed 01 May 2008, the status of the claims is as follows:

Claims 1 and 7 are currently amended;

Claims 2-5 and 8-39 are as originally filed; and

Claims 6 and 40-53 are cancelled.

### ***Response to Arguments***

2. Applicant's arguments, see Remarks, pp. 8-11, filed 01 May 2008, with respect to the rejection of claims 1, 2, 6-22, 38, and 39 under 35 U.S.C. 102(b) as being anticipated by Ward et al, U.S. Patent No. 5,711,861 A ("Ward"), have been fully considered, but are moot in view of the new ground(s) of rejection.

3. Applicant's arguments, see Remarks, pp. 8-11, filed 01 May 2008, with respect to the rejection of claims 1-39 under 35 U.S.C. 102(e) as being Schulman et al, U.S. Patent No. 6,088,608 A ("Schulman"), have been fully considered, but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-5 and 7-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulman, in view of Sackner et al, U.S. Patent No. 6,047,203 A ("Sackner").

**As to claims 1-5 and 7-39**, Schulman teaches a continuous glucose monitoring system (see fig. 1), comprising: a sensor 10 configured to detect one or more glucose levels; a transmitter 108 operatively coupled to the sensor, the transmitter configured to receive the detected one or more glucose levels, the transmitter 108 further configured to transmit signals corresponding to the detected one or more glucose levels, wherein the transmitter 108 is configured to encode the detected one or more glucose levels received from the sensor to generate encoded signals, the transmitter 108 further configured to transmit the encoded signals to the receiver (see col. 10, ll. 18-28); and a receiver 16 operatively coupled to the transmitter configured to receive transmitted signals corresponding to the detected one or more glucose levels; wherein the

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transmitter is configured to transmit a current data point and at least one previous data point, said current data point and said at least one previous data point corresponding to the detected one or more glucose levels (see col. 5, ll. 42-55); wherein the receiver is operatively coupled to the transmitter 108 via an RF communication link (see col. 5, l. 48), wherein the receiver is configured to decode the encoded signals received from the transmitter (see col. 10, ll. 18-28).

Schulman does not teach "wherein the transmitter is configured to transmit three data points per minute to the receiver, said three data points corresponding to the detected one or more, glucose levels" or "wherein the transmitter is configured to transmit a current data point and at least one previous data point, said current data point and said at least one previous data point corresponding to the detected one or more glucose levels". However, Sackner teaches physiological monitoring system 10 ("NimShirt", see col. 2, l. 22), including a sensor 20-25; a transmitter 46; and a receiver 50 (see fig. 3), wherein the transmitter is configured to transmit three data points per minute to the receiver, said three data points corresponding to the detected physiological parameters or configured to transmit a current data point and at least one previous data point, said current data point and said at least one previous data point corresponding to the detected physiological parameters (see col. 2, ll. 26-34). Sackner explicitly states the following (see col. 2, ll. 26-34):

The NimShirt transmits data at a rate ranging from approximately 25-200 points/second. Optionally, a one minute trend numerical value reduced from data processed waveforms is transmitted every five to ten minutes in which case the NimShirt may transmit data at the rate ranging from approximately 25-200 points/second only when an adverse or

preprogrammed event occurs to thereby conserve the batteries powering the electronics on the NimShirt.

Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Schulman's transmission rate in order to conserve the battery powering the electronics on Schulman's glucose monitoring system. In addition, Applicant's specification is silent on the advantage to having a glucose monitoring system with a transmitter that is "configured to transmit three data points per minute to the receiver, said three data points corresponding to the detected one or more, glucose levels" or "configured to transmit a current data point and at least one previous data point, said current data point and said at least one previous data point corresponding to the detected one or more glucose levels".

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other patents cited in the PTO-892 teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAVIN NATNITHITHADHA whose telephone number is (571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Navin Natnithithadha/  
Patent Examiner, Art Unit 3735  
08/07/2008